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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the World Society of Victimology, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 March 1996]

1. The history in the disputed State of Jammu and Kashmir of article 21 (3) of the Universal Declaration of Human Rights, holding that "the will of the people shall be the basis of the authority of government ...", is littered with nine Presidential Rules, against the eight elections of 1951, 1957, 1962, 1967, 1972, 1977, 1983, 1987. These elections too have been condemned as rigged and unrepresentative.

2. Participation in the conduct of public affairs is a basic human right increasingly prized by people throughout the world. The right to take part in government is proclaimed and guaranteed by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and is recognized in many other treaties and declarations.

3. India is desperate for the return of a political process and has plans to hold elections in the disputed State of Jammu and Kashmir. The popular resistance of the people of Kashmir makes the socio-political habitat of Kashmir exceptionally abnormal.

4. The litmus test for judging India on the standard scale of human values remains the treatment of over 2 million Kashmiris displaced since 1947, its respect for article 26 (2) of the Universal Declaration of Human Rights, in "strengthening of respect for human rights and fundamental freedoms" and in keeping its pledge in regard to the right of self-determination of the people of Kashmir.

5. The 2 million displaced Kashmiris continue to suffer political and legal prejudice by being denied their right to return to their homes "in safety and dignity". People of Kashmir have suffered five displacements. The displacement of Kashmiri Muslims has been State sponsored and that of Kashmiri Pandits circumstantial. Some 1.5 million Kashmiri Muslims are refugees in Pakistan and 500,000 remain displaced in Azad Kashmir. Quite a large number of these displaced Kashmiris remain spread around the globe.

6. Security Council resolution 47 (1948) of 21 April 1948 charged the State of India to ensure that "all citizens of the State who left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens".

7. The Nehru-Abdullah agreement concluded on 20 July 1952 at Delhi states as follows:

> "It was agreed that:- special provision should be made to provide for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with disturbances of 1947 or in fear of them. If they return they should be entitled to the rights and privileges and obligations of citizenship."

8. The legislature of Jammu and Kashmir State passed its Resettlement Bill of the Jammu and Kashmir Assembly on 10 May 1982, reinforcing the right of the refugees to return to their homes. The Government of India, to frustrate the ability of the displaced to return to their homes in Kashmir, sought Supreme Court reference on the matter. The mala fides are to stall the active legislation on the right of the displaced people of Kashmir to return.

9. The civilized world, through the United Nations, has to enforce its formal locus standi and demand compliance with international law and appeal to general humanitarian values, in particular in regard to these displaced people.

10. India, in regard to the State of Jammu and Kashmir, in her letter S/628 of 1 January 1948 addressed to the President of the Security Council, invoked Article 35 of the Charter of the United Nations for an immediate action of the Security Council to avoid a breach of "international peace". At the 226th meeting, on 6 January 1948, of the Security Council, India and Pakistan,

in reply to the two identical telegrams of 6 January sent by the Security Council President, affirmed their intention to conform to the Charter of the United Nations.

11. Ever since, the people of Kashmir have remained a subject of the United Nations under its responsibility for the maintenance of international peace and security. The United Nations has in part accomplished its package of a cease-fire, appointment of a Plebiscite Administrator, withdrawal of forces, delegation of powers to United Nations personnel and the holding of a free, fair and impartial plebiscite under United Nations machinery.

12. The people of Kashmir, identifiable under the State Subject Notification No. 1-L84 of 20 April 1927, have remained locked in a conflict with India since 6 January 1948. Their pursuit of the right to self-determination is now the long-unresolved dispute at the United Nations. The right to self-determination is fundamental to the enjoyment of any other human right.

13. Political democracy cannot be isolated from other factors in the life of a country. Kashmir is a subject of the right to self-determination at the United Nations. The United Nations package on Kashmir prescribed for India to make known the withdrawal of her forces to a minimum, and to arrange for the remaining forces to be stationed according to the following principles: "(i) that the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State; (ii) that as small a number as possible should be retained in forward areas" (Security Council resolution 47/1948).

14. Opposed to this bidding of an abridged role of the Indian Army, India committed a breach and has deployed 44 per cent of its military strength in Kashmir. The Army has engaged in massive abuses of human rights, killing nearly 40,000 innocent men, women and children. There are 65 well-known interrogation centres and a number of unidentified underground torture cells. The sexual coup de grâce of women, deaths in custody, disappearances, imprisonment and torture under detention have been documented by United Nations special rapporteurs and NGOs from India and around the globe.

15. "Elections in and of themselves do not constitute democracy. They are not an end but a step, albeit an important and often essential one, on the path towards the democratization of societies and the realization of the right to take part in the governance of one's country as enunciated in major international human rights instruments. It would be unfortunate to confuse the end with the means and to forget that democracy implies far more than the mere act of periodically casting a vote, but covers the entire process of participation by citizens in the political life of their country" (Report of the Secretary-General, A/46/609, para. 76).

16. The people of Kashmir have staged an active armed resistance against the Indian Army since January 1990. The decision to hold elections in the State of Jammu and Kashmir comes after nine spells of Presidential Rule, heavy loss of life and claims that there has been a "warlike situation" in Kashmir.

17. Elections in Kashmir and the exercise of the right to self-determination remain distant. Police and security forces accused of massive abuses of rights cannot be trusted to play a role in balancing between, on the one hand, the need for electoral security and maintenance of order and, on the other hand, the importance of non-interference with rights and the existence of an environment free of intimidation.

18. The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in 1979 imposes a duty of service to the community upon officers of the law (art. 1). This notion necessarily requires that security forces strive to ensure that all citizens benefit from elections that are administratively sound and free of any disruptive forces which seek to undermine the free expression of popular will. The Code of Conduct provides that "law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons" (art. 2). This includes not only the human right to take part in elections, but all human rights. Police agencies that do not respect fundamental human rights have the potential to create an intimidating atmosphere that will inhibit the electorate and thereby subvert the genuineness of the election's outcome. The essence of a free election eludes human grasp in the present conditions in Kashmir.

19. The Universal Declaration of Human Rights provides that everyone has the right to take part in the government of his country, directly or through freely chosen representatives (art. 21). The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights state that, by virtue of their right to self-determination, all people have the right freely to determine their political status (common art. 1). This right is echoed in the Declaration on the Granting of Independence to Colonial Countries and Peoples (para. 5), which also provides that the freely expressed will and desire of the people is to guide the transfer of power to them.

20. The announced elections have a ring of suspicion around them. People may not have an informed choice or civic education on the right to self-determination. Even if elections are considered, for one or another, explainable or inexplainable, reason, equal access remains denied to over 2 million Kashmiris. The Indian Government, as a State policy, has not only displaced five generations of people, but has created political and a legal prejudice against their right to return to their homes "in safety and dignity". India continues to disregard its pledge to respect the right of self-determination of the people of Kashmir.